

AMENDED IN ASSEMBLY MAY 6, 2013

AMENDED IN ASSEMBLY APRIL 24, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1164

**Introduced by Assembly Member Lowenthal
(Coauthor: Assembly Member Roger Hernández)**

February 22, 2013

An act to add Chapter 3 (commencing with Section 3000) to Title 14 of Part 4 of Division 3 of the Civil Code, relating to liens.

LEGISLATIVE COUNSEL'S DIGEST

AB 1164, as amended, Lowenthal. Liens: employees and workers.

Existing law grants specified persons, including laborers, as defined, who contribute labor, skill, or services to a work of improvement the right to record a mechanic's lien upon the property so improved.

This bill would, with certain exceptions, authorize an employee to record and enforce a wage lien upon ~~specified~~ real and personal property *of an employer, or a property owner, as specified*, for wages, other compensation, and related penalties and damages owed the employee. The bill would prescribe requirements relating to the recording and enforcement of the wage lien. The bill would require a notice of lien on real property to be executed under penalty of perjury.

By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 3 (commencing with Section 3000) is added to Title 14 of Part 4 of Division 3 of the Civil Code, to read:

CHAPTER 3. WAGE LIENS

3000. (a) An employee shall have a lien for the full amount of any wages, other compensation, and related penalties and damages owed to the employee on the following property:

(1) All property of the employer, including any after-acquired property, except that if the employer is a natural person, a lien shall apply to the employer's principal residence only to the extent that the employee provided labor to the benefit of that household or residence.

~~(2) Property, other than the employer's principal residence described in paragraph (1), upon which the employee bestowed labor, except for the principal residence of an owner who is not the employer, provided that the amount of the lien on this property shall be equal to the amount of wages, compensation, and related penalties and damages accrued during the time the employee bestowed labor on that specific property.~~

(2) The property upon which the employee bestowed labor for the benefit of the property owner and with the owner's consent or knowledge that such labor was being provided. The amount of the lien on such property shall be limited to the amount of wages, compensation, and related penalties and damages accrued during the time the employee bestowed labor on that specific property.

(b) The amount of this lien shall include unpaid wages, all other compensation required under California law, penalties and damages available under the Labor Code, interest at the same rate as for prejudgment interest in this state, and the costs of filing and service of the lien. The amount of compensation that may be claimed as a lien under this section includes all wages agreed to be paid to the employee, but no less than the amount required by law,

1 including direct wages and compensation required to be paid to
2 other persons or entities, that would qualify as “employer
3 payments” described in Section 1773.1 of the Labor Code.

4 (c) ~~An~~ *The lien shall be subject to the following limits:*

5 (1) *An employee’s lien upon personal property shall be limited*
6 *to property subject to a security interest under the Commercial*
7 *Code pursuant to the filing of a financing statement with the*
8 *Secretary of State.*

9 (2) *The lien described in paragraph (2) of subdivision (a) shall*
10 *not apply to property bought or services furnished primarily for*
11 *personal, family, or household purposes, including any real*
12 *property that is the principal residence of the owner.*

13 (d) Any act authorized or required under this chapter with regard
14 to an employee may also be undertaken by any person or entity,
15 including any governmental agency, to which a portion of an
16 employer’s compensation is payable or that has standing under
17 applicable law to maintain a direct legal action on behalf of the
18 employee to collect any portion of compensation owed to the
19 employee.

20 (e) A lien pursuant to this chapter shall not be claimed by an
21 employee who is exempt from the protections of Industrial Welfare
22 Commission wage orders. However, in any action involving such
23 a lien, the employer or property owner shall plead and prove
24 exempt status as an affirmative defense.

25 (f) A lien pursuant to this chapter is in addition to any other lien
26 rights held by the employee and shall not be construed to limit
27 these rights.

28 3001. (a) The lien described in Section 3000 shall be
29 permanently extinguished unless a notice of lien in accordance
30 with Section 3002 or 3003 is recorded and served within one year
31 of the date that the employee ceased working for the employer.

32 (b) The employee shall commence an action to enforce the lien
33 and prove the amount owed within 180 days of the date of filing
34 or recording of the notice of lien. If the employee does not
35 commence an action to enforce the lien within that time, the lien
36 shall be permanently extinguished and is unenforceable.

37 (c) (1) Subdivision (b) does not apply if the employee and the
38 owner of the property subject to the lien agree to extend the time
39 for enforcing the lien in writing and record or file notice of the

1 fact and terms of the extension within either of the following
2 periods:

3 (A) 180 days after recordation or filing of the notice of lien.

4 (B) More than 180 days after recordation or filing of the notice
5 of lien but before a purchaser or encumbrancer acquires rights in
6 the property for value and in good faith.

7 (2) In the event of an extension, the employee shall commence
8 an action to enforce the lien within 180 days after the expiration
9 of the extension. If the employee does not commence an action to
10 enforce the lien within that time, the lien shall be permanently
11 extinguished and is unenforceable.

12 (d) If the lien has been extinguished pursuant to subdivision (b)
13 or (c), upon demand and 15 days' notice by any affected party, the
14 employee shall record or file a release of the lien.

15 3002. (a) With regard to a lien on real property, the employee
16 shall record a notice of lien with the county recorder in the county
17 where the real property is located.

18 (b) The notice of lien shall be executed under penalty of perjury
19 and shall include all of the following:

20 (1) A statement of the employee's demand for unpaid wages,
21 other compensation, related penalties, and damages. The statement
22 shall specify the amount owed to the employee, and if the amount
23 is estimated, shall provide an explanation for the basis of the
24 estimate.

25 (2) A general statement of the kind of work furnished by the
26 employee and the dates of employment.

27 (3) The name of the person by whom the employee was
28 employed.

29 (4) The employee's mailing address.

30 (5) For property described in paragraph (2) of subdivision (a)
31 of Section 3000, both of the following:

32 (A) A description of the site upon which the work was
33 performed sufficient for identification.

34 (B) The name of the owner or reputed owner, if known.

35 (c) The employee or employee representative shall serve the
36 notice of lien on the employer and the owner or reputed owner of
37 the real property subject to the lien, as follows:

38 (1) For an employer, notice of lien shall be served by registered
39 mail, certified mail, or first-class mail, evidenced by a certificate

1 of mailing, postage prepaid, addressed to the employer at the
2 employer's residence or place of business.

3 (2) For an owner or reputed owner who is not the employer,
4 notice of lien shall be served by registered mail, certified mail, or
5 first-class mail, evidenced by a certificate of mailing, postage
6 prepaid, addressed to the address of the property subject to the lien
7 or to the residence or place of business of the owner or reputed
8 owner.

9 (d) For property described in paragraph (1) of subdivision (a)
10 of Section 3000, the lien attaches to all real property owned by the
11 employer at the time of the filing of the notice of lien, or that is
12 subsequently acquired by the employer, that is located in any
13 county in which the notice of lien is recorded, regardless of whether
14 the property is identified in the notice of lien. For property
15 described in paragraph (2) of subdivision (a) of Section 3000, the
16 lien attaches only to the property that is specifically identified in
17 the notice of lien.

18 3003. (a) With regard to a lien on personal property, the
19 employee shall file a notice of lien with the Secretary of State.
20 Except as otherwise provided in this chapter, the manner, form,
21 and place of filing shall be as described in Chapter 5 (commencing
22 with Section 9501) of Division 9 of the Commercial Code. The
23 notice of the lien shall be placed in the same file as financing
24 statements pursuant to Section 9522 of the Commercial Code.

25 (b) The notice shall be executed under penalty of perjury and
26 shall state the following:

27 (1) The amount of the claim for unpaid wages, other
28 compensation, related penalties, and damage, and if the amount is
29 estimated, shall provide an explanation for the basis of the
30 estimation.

31 (2) A general statement of the kind of work furnished by the
32 employee and the dates of employment.

33 (3) The name of the person by whom the employee was
34 employed.

35 (4) The employee's mailing address.

36 (5) To the extent known, a description of the property on which
37 the lien is made. Regardless of whether the property is specifically
38 described in the notice, the lien attaches to all personal property
39 owned by the employer or subsequently acquired by the employer

1 that can be made subject to a security interest under the
2 Commercial Code.

3 (c) The employee or employee representative shall serve the
4 notice of lien on the employer and the owner or reputed owner of
5 the property subject to the lien, as follows:

6 (1) For an employer, notice of lien shall be served by registered
7 mail, certified mail, or first-class mail, evidenced by a certificate
8 of mailing, postage prepaid, addressed to the employer at the
9 employer's residence or place of business.

10 (2) For an owner or reputed owner who is not the employer,
11 notice of lien shall be served by registered mail, certified mail, or
12 first-class mail, evidenced by a certificate of mailing, postage
13 prepaid, addressed to the residence or place of business of the
14 owner or reputed owner.

15 (d) For property described in paragraph (1) of subdivision (a)
16 of Section 3000, the lien attaches to all personal property that can
17 be made subject to a security interest under the Commercial Code
18 that is owned by the employer at the time of filing of the notice of
19 lien or that is subsequently acquired by the employer, regardless
20 of whether the property is identified in the notice of lien. For
21 property described in paragraph (2) of subdivision (a) of Section
22 3000, the lien attaches only to the property that is identified in the
23 notice of lien.

24 3004. (a) In order to enforce a lien under Section 3000, the
25 employee shall demonstrate in a civil action, or in a proceeding
26 under Section 98 of the Labor Code, that he or she is owed wages
27 or other compensation and any related penalties and damages. In
28 addition, if the owner or reputed owner of the property is not the
29 employer, the employee shall demonstrate that the property was
30 property subject to the lien under paragraph (2) of subdivision (a)
31 of Section 3000.

32 (b) If the employee chooses to pursue the wage claim in an
33 administrative proceeding before the Labor Commissioner pursuant
34 to Section 98 of the Labor Code, the Labor Commissioner may
35 establish the amount of lien if a lien has been recorded. If no lien
36 has been recorded at the time the administrative claim is filed, the
37 Labor Commissioner may record the lien on behalf of the
38 employee.

39 (c) If a notice of lien is recorded or filed pursuant to Sections
40 3002 or 3003 and an action to recover unpaid wages has been filed

1 by the employee or employee representative, that action shall also
2 be deemed an action to enforce the lien and foreclose upon any
3 property subject to the recorded lien. In the judgment resulting
4 from an action, the court may order the sale at a sheriff's auction
5 or the transfer to the plaintiff of title or possession of any property
6 subject to the lien. Whether or not the court makes an order as part
7 of the judgment, any property subject to the lien may be foreclosed
8 upon at any point after a judgment for unpaid wages is issued.

9 (d) The employee or employee representative is entitled to court
10 costs and reasonable attorneys' fees for filing a successful action
11 to enforce a lien pursuant to this section.

12 (e) If judgment is entered against the employee or employee
13 representative in the action to enforce the lien or if the case is
14 dismissed with prejudice, the lien shall be extinguished upon
15 expiration of the applicable appeals period if no appeal is filed. If
16 an appeal is filed, the lien shall continue in force until all issues
17 on the appeal have been decided. If the lien is extinguished, upon
18 demand and 15 days' notice by the property owner, the employee
19 or employee representative shall file a release of the lien.

20 (f) Any number of claims to enforce employee liens against the
21 same employer may be joined in a single proceeding, but the court
22 may order separate trials or hearings. If the proceeds of the sale
23 of the property subject to a lien are insufficient to pay all the
24 claimants, whether or not claims have been joined together, the
25 court shall order the claimants to be paid in proportion to the
26 amount due each claimant.

27 ~~3005. (a) A lien established pursuant to this chapter takes~~
28 ~~precedence over all other liens, claims, or encumbrances perfected~~
29 ~~after the date that the notice of lien is filed or recorded, and is~~
30 ~~effective against the estate of the employer, or any subsequent~~
31 ~~purchaser of the property subject to the lien.~~

32 ~~(b) In addition, as to the first fifty thousand dollars (\$50,000)~~
33 ~~of the amount claimed, a lien established pursuant to this chapter~~
34 ~~takes precedence over all other liens, claims, or encumbrances~~
35 ~~perfected prior to the date of filing or recording of the notice of~~
36 ~~lien, except for the following:~~

37 ~~(1) A tax lien or other government lien.~~

38 ~~(2) A purchase money mortgage.~~

1 ~~(3) Other liens that also arise from the performance of labor,~~
2 ~~including, but not limited to, mechanics liens arising under Section~~
3 ~~8400.~~

4 SEC. 2. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.